EXHIBIT 17

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND

CHEVRON CORPORATION, Plaintiff	:	
vs	:	Civil Action: RWT-11-1942
AARON MARR PAGE, Defendants.	:	**EXCERPTED PROCEEDINGS**

Wednesday, August 31, 2011
Greenbelt, Maryland

The above-entitled action came on for a Motions Hearing before the HONORABLE CHARLES B. DAY, United States Magistrate Judge, in courtroom 2A, commencing at 2:05 p.m.

APPEARANCES:

On behalf of the Plaintiff:
PETER E. SELEY, Esquire
ANNE CHAMPION, Esquire

On behalf of the Defendants:
JULIO C. GOMEZ, Esquire (Pro Hac Vice)
RICHARD D. CARTER, Esquire

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Reporter's Certificate 14

THE COURT: Thank you.

I want to thank you both for excellent presentations. I know it's high stakes litigation and, certainly, both counsel have brought A games to the table. The first one -- the first issue up for me is whether the Donziger waiver of the attorney-client and work product privileges apply to the Page documents. I would agree with the respondents on one particular and that is that this was not a truly voluntary waiver at all. But it is clear to me that all of the work that was performed here was performed under Mr. Donziger.

And I will quote as the defense, as the moving party, has quoted to me more than once, Chevron -- in In Re: Chevron 749 F. Supp 2d, 170 at 185, Southern District of New York. The Court declared, based upon, quote, "the law on the facts, and in the exercise of discretion, that each and every privilege claim with respect to the documents sought by the subpoenas has been waived." This declaration related to the legal work and privilege claims associated with Mr. Donziger. Therefore, in my opinion, the Pages cannot assert privilege.

I do find the Fonar versus Johnson & Johnson case out of the District of Massachusetts to be instructive. There was a single privilege between the client and the

firm, and one waiver waives the privilege as to all attorneys working jointly on that case.

As to the voluntariness. Again, it's not a true voluntary waiver, it was a court sanction, but the Court has still required full production of the requested materials as to Donziger. The Pages worked under his production. There is no reason for the documents that were in their possession not to have been produced with the other Donziger materials.

The Court's decision from In Re: Chevron I find is controlling on this issue, and Fonar is equally applicable. There, the Court found that Donziger's actions were calculated and represented a deliberate attempt to obtain a tactical advantage. Judge Kaplan's original summary order, in his subsequent decision, reached all of the documents in Mr. Donziger's protection, custody, as well as those in the Pages.

"Where an attorney-client or work product claim was asserted, Donziger had the practical ability," closed quote, to obtain those documents. There is no difference here just because you're injecting other players who may have worked under him. It's not as if the privilege is somehow protected because he may have 5 other people in 5 other states working under his direction. There is no difference here, because they're working on the same

case, they're working under his direction with respect to the same crime.

I find that this is virtually the same conclusion that was reached by magistrate judge Francis. Theirs related to other legal inference and other co-counsel who were aligned with Mr. Donziger. So, the motion to compel will be granted on that basis alone. And I am requiring, just like Judge Francis did, that all responsive documents be produced forthwith.

Now, it may be that I am in error but I will proceed to walk through some of the other arguments that both sides have taken a lot of time to educate me on.

The second one on deck to me is what privilege has been waived by some disclosure to third parties. Basically, Chevron is talking about the *Crude* movie, the expert Mr. Cabrera, the Ecuadorian court, Amazon Watch and sundry folks. And the question is whether or not it's about an intentional waiver of the attorney-client work product privileges.

I, again, am borrowing from other litigation involving these same folks in the In Re: Chevron decision out of the Southern District of Texas in 2010. There, the Court found that the privileges were in fact waived by a plaintiff's failure to establish privileges and by a disclosure of information to Mr. Cabrera. The privilege

there were claims regarding the report involving that 3TM Consulting Services which were provided and given to Mr. Cabrera. I see no reason to disturb these findings of the court from the Southern District of Texas, and I adopt them. As there was a waiver as to the information provided to Mr. Cabrera there, it also results in a waiver here.

I also borrow from the Fourth Circuit's decision in Sheet Metal Workers International Association versus Sweeney found in 29 F. 3d 120, Page 125, a 1994 decision, which basically said voluntary disclosures to third parties of attorney-client privileged communications results in a subject matter waiver.

There was some discussion by the respondents about disclosure of work product to a third party as a waiver only when it's inconsistent with the shielding of documents from adversaries, and I think that's been modified a little bit even though the decision that was relied upon was a 2004 Fourth Circuit decision of Hanson versus USAID. I think that the Federal Rules of Evidence 502 has made it clear that we're not talking about a consistency any more. We're talking about fairness when you're speaking about some kind of intentional waiver.

The respondents indicate that Mr. Cabrera would not be compelled to share his Ecuadorian -- with the

Ecuadorian plaintiffs documents that were provided by Chevron. Therefore, the disclosure of Mr. Cabrera was not inconsistent with the intent to shield it from adversaries relying upon that strain of the law.

But I think this ignores the information that Chevron presented by Exhibit No. 84, which represents that the Ecuadorian court ordered disclosure of all information provided to Mr. Cabrera, and I quote, "Concerning its content and petition, the judicial decision issued October 22nd 2007 at 5:10 p.m. is expanded upon to the effect that all the documents that serve as support or a source of information for the work performed by the expert," here we're speaking about Mr. Cabrera, "must be presented, together with the report."

And here is this last sentence. "At that time, all of these documents would be provided to the parties." There is no intent by the Court at that time to have anything else held in secrecy or withheld from the parties. In fact, it's just the opposite. The Ecuadorian plaintiffs suggest that Chevron has not been prejudiced, because the Court did not rely upon it. I do not find that the law requires that kind of prejudice component in order to find a waiver of materials presented to Mr. Cabrera.

Moreover, Chevron has made a very persuasive

argument in its reply brief, which is supported by a court decision that the Cabrera report still tainted judgment from Ecuador, and that's the decision from the Southern District of New York in 2011 found at 768 F. Supp.

I personally do not find it good policy to suggest that there has been a complete waiver of the attorney-client or work product -- work protection privileges by a court in Texas and then in some way the same information provided to the same expert does not result in the same conclusion here. Whether it was compelled disclosure or not, the more probative question to me is whether Cabrera, under the applicable rule, would be prohibited from disclosing the information to Chevron. That was not the case, and the court was not intending it to be the case. We didn't spend a lot of time on it and, I think, rightfully so.

All those communications with respect to the making of the movie *Crude*? I do not find them to have been privileged at all. It was not -- they were not made in confidence. There was outtakes in many instances and all instances. While I do not agree that Chevron should be collaterally estopped from re-arguing that, I still adopt the reasoning of the court from the Third Circuit. And I find no privilege ever existed as to the

communications, because they were not made in confidence.

Prong number three was that there a waiver due to the filing of inadequate privilege logs? Here the movant relies upon Nuzum versus Morgan State, a District of Maryland decision from 2010, noting that failure to provide a privilege log may constitute a waiver. They're right, it may constitute a waiver. There is no per se rule resulting in automatic waiver.

And I think the respondent respondents rightfully rely upon the Richardson decision from this year. And this court and some courts require a finding of unjustified delay or inexcusable conduct or bad faith, and we are borrowing from the Herbal Life decision out of the Northern District of West Virginia in 2006.

Sadly, the Federal Rules of Civil Procedure, whether it's Rule 26, whether it's Rule 45, nor do our local rules set forth a timeline for the production of a privilege log. I think the practice is one in question. I side with the movant on that one. I think the practice is when you make the objections and at a minimum by the time you produce responsive documents and you are withholding some, that's when the log should be provided.

I do have the logs before me. I overlooked that. But I do not find that the late production of the log here would result in a waiver, not on these facts. Not

given the breadth and scope of the efforts of the respondents to produce. I just don't find that it does enough, which brings me to the fourth prong and that is the crime fraud exception.

There is a court in the Southern District of New York that ruled this year that there is ample evidence of fraud in those proceedings. The Third Circuit did not reach the issue and directed the trial court to make further factual findings on that subject. I have entered into this thicket with great hesitancy, but I do find that there is a crime fraud exception applicable here.

I do think that the movant has couched it correctly saying that there is no burden to demonstrate knowledge by counsel. Yes, there is the need to have it tied to the documents or the subject matter at hand. I do think it reaches opinion work product, and I do think that probable cause has been established if for no other reason than for the production of the admittedly co-authored, or documents co-authored by the Pages, which has found its way into the decision in Ecuadorian court, buttressed by at least the submission by plaintiff, I'm sorry, the movant here or the analytical report of their expert, shown to me in a presentation to me that was very effective and certainly supported by the submissions to the court, that it is a virtual line-by-line entry on

many occasions.

And with those submissions made to the court, for them not to be addressed or not to be responded to with some record evidence or some reference to the record of the Ecuadorian court, that is a sure fire pass the smell test" presentation of more probable than not. I have no reservations in that instance alone, and there is a lot of other information that the movants have provided to support the notion that there is fraudulent activity. And I do accept the findings, the factual findings, of my colleagues in the federal courts of the United States on this issue where it has been made.

I agree with the respondents that not every court -- in fact, most courts do not reach that issue, but I have read their decisions and I accept them not because of the decision but because of the factual underpinning. We could spend a good deal of time here today spelling those out.

So, at the end of the day, regardless of how I get there, and I get there, I get to the same place by at least four or five different routes. This information is very much discoverable. It is no longer privileged, and it is to be produced immediately. I'm hoping that there will be full compliance with that order.

Anything further from the movants?

MR. SELEY: No. Thank you very much, Your Honor.

THE COURT: Thank you. Anything further from the respondents?

MR. GOMEZ: Yes, Your Honor. I would respectfully request a stay of your order pending an application and decision on reconsideration.

THE COURT: Well, I'll deny that. If there is a motion for reconsideration that is filed that presents information and supporting affidavits or evidence that was not presented today or submitted in your previous submissions and I am persuaded that that information was not available to you today, then I, in the essence of the word, will gladly take a long and closer look at that. Our local rules do not entertain a mulligan, if you will, just for the sake of further thought. If you've got some new information, absolutely. I would welcome that. But a rehashing or re-chewing on the same information will not be productive. I will not enter a stay at this time.

You have a hearing date, I believe, of September 16th on some issues, and then you've got something else coming down the pipe in November, unless the dates have been moved.

MR. SELEY: Your Honor, we have the trial date in November. November 14th is the set date in trial, and we've got discovery closing in mid-September. It closes

in part on September 15th, I believe, and then we've got experts on the 29th. So the 15th is really the time to close.

THE COURT: Yes. I picked this up and had to deal with it on an expedited basis for those reasons, and I don't think that a stay would be of assistance or within the spirit of that exercise.

So, with that, I will step down. I thank you all again for your presentations. More to be said?

MR. GOMEZ: Your Honor, not to run afoul of your order. Forthwith? Can we have more specificity as to a deadline, Your Honor?

THE COURT: Now. So if you've got the documents, start handing them over.

MR. GOMEZ: Thank you, Your Honor.

THE COURT: Okay. Thank you all. I wish you well.

MR. SELEY: Thank you, Your Honor.

(Off the record at 3:51 p.m.)

CERTIFICATE

I, Tracy Rae Dunlap, RPR, CRR, an Official Court Reporter for the United States District Court of Maryland, do hereby certify that I reported, by machine shorthand, the proceedings had in the case of CHEVRON CORPORATION versus AARON MARR PAGE, et al, Civil Action Number RWT-11-1942, on August 31, 2011.

In witness whereof, I have hereto subscribed my name, this 1st day of September 2011.

__/S/__Tracy Rae Dunlap__
TRACY RAE DUNLAP, RPR, CRR
OFFICIAL COURT REPORTER